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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

PAUL E. SULLIVAN, ET AL., PETITIONERS

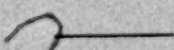
v.

LITTLE HUNTING PARK, INC., ET AL.

T. R. FREEMAN, JR., ET AL., PETITIONERS

v.

LITTLE HUNTING PARK, INC., ET AL.


*On Writ of Certiorari to the
Supreme Court of Appeals of Virginia*

PETITIONERS' SUPPLEMENTAL BRIEF

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The United States, in its brief as *amicus curiae*, suggests that the award of punitive damages would not be appropriate in this case (br. p. 35, n. 16). Since the issue of damages is central to Freeman's obtaining judicial relief—an injunction being of little value to him because of his departure from the area—petitioners wish to emphasize to the Court their disagreement with the Government's position.

The Government asserts that punitive damages are foreclosed because the acts complained of predated the inter-

pretation of the Civil Rights Act of 1866 announced in *Jones v. Mayer Co.* However, no legal authority is cited by the Government for this proposition—and on the basis of their own research, petitioners submit that there is none. To the contrary, the authorities support an opposite conclusion. Thus the Government seems to say that punitive damages are not warranted, because at the time defendants took action against Freeman and Sullivan, they did not know that their conduct violated the Civil Rights Act of 1866, because *Jones* had not been decided. However the malice, ill will or bad motive underlying an award of punitive damages is a state of mind which is not dependent on the actor's knowledge that his conduct is unlawful. Indeed, he usually acts in the belief that his conduct is lawful. A situation much like the one at bar existed in *Scott v. Donald*, 165 U.S. 58, where an award of punitive damages was approved by this Court based on the seizure by the defendants of contraband liquor under color of a state law which the Court held was unconstitutional. There, as here, at the time of the acts complained of, the defendants did not know that their conduct was unlawful—yet, as was later held, it was, and punitive damages were awarded.

There undoubtedly are many other cases of like nature which would be revealed by more extended research. Reference will only be made at this time to such cases, for example, as *Automobile Workers v. Russell*, 356 U.S. 634; *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656; and *Linn v. Plant Guard Workers*, 383 U.S. 53. In each of these cases, there was good reason to believe that the acts in question constituted unfair labor practices under the National Labor Relations Act and that therefore the National Labor Relations Board would have exclusive jurisdiction to redress any injury incurred. The Board, however, was unable to provide relief of the kind sought in these cases. Accordingly, the defendants would not have known at the time of the commission of their acts that their conduct was actionable in the state courts. This Court not only held that state court jurisdiction ex-

isted in these cases, but it approved awards of punitive damages in each instance.

From the inception of this proceeding, plaintiffs have demonstrated that they are entitled to punitive damages.¹ Their complaints alleged (A. 9-11, 18), and the evidence shows, that the defendants' attitude and conduct in relation to both the Freeman and Sullivan families during the period material herein was characterized by anger, hostility, malice, and vindictiveness, elements warranting punitive damages.² Plaintiffs also presented detailed argument, based on the evidence, in their brief to the trial court (pp. 19-21) concerning their right to punitive damages. This case, therefore, is not like *Jones v. Mayer Co.*, 392 U.S. at 415, n. 14, where the Court indicated that on the basis of the facts alleged in that complaint, the plaintiffs were not entitled to punitive damages. In the case at bar, plaintiffs

¹The Sullivan and Freeman complaints each sought damages of \$15,000. In Virginia, punitive damages are recoverable, even though they are not asked for by name in the complaint, if the complaint alleges a state of facts which, if proved, entitle the plaintiff to them. *Wood v. American National Bank*, 100 Va. 306, 40 S.E. 931, 932; *Richmond Passenger & Power Co. v. Robinson*, 100 Va. 394, 41 S.E. 719, 720.

²See generally, McCormick *Law of Damages* (1935). In addition to the cases cited in plaintiffs' main brief (pp. 53-54), see *Greenberg v. Western Turf Ass'n*, 140 Cal. 357, 73 P. 1050, 1051-1052, aff'd 148 Cal. 126, 82 P. 684, aff'd 204 U.S. 359.

meet both the legal and factual criteria for punitive damages and the Government's suggestion to the contrary is without merit.

Respectfully submitted,

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